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BY EMAIL

Honorable Analisa Torres
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: **In re Search Warrant Dated November 5, 2021, Case No. 21-MC-00813 (AT)**

Dear Judge Torres:

We are writing to supplement the record in connection with the Joint Petition for Return of Property filed by Project Veritas and its aggrieved journalists [Dkt. No. 70] (hereinafter “Joint Petition”). The Court will recall that the Joint Petition challenges as unlawful (i) warrants executed at the residences of Project Veritas journalists James O’Keefe, Spencer Meads, and Eric Cochran (jointly “Petitioners”) in November 2021 (“the PV Warrants”); and (ii) warrants and orders issued to Microsoft throughout 2021, and in late 2020, to compel production of nearly two hundred thousand Project Veritas emails and other files (“the Microsoft Warrants”). *See* Joint Petition at 7-14.

A significant issue briefed by the parties concerns U.S. Department of Justice (“DOJ”) regulations governing the use of subpoenas and search warrants to obtain documents and other information from members of the news media. *See* 28 C.F.R. § 50.10 (“the DOJ Regulations”). These regulations were promulgated at the direction of Congress to provide for the protection of privacy interests, including First Amendment principles, underlying the Privacy Protection Act (“PPA”). *See* 42 U.S.C. § 2000aa-11.

As explained in the Joint Petition at 18-19, federal prosecutors and agents “must obtain the authorization of the Attorney General to apply for a warrant to search the premises, property, communications records, or business records of a member of the news media.” *See* 28 C.F.R. § 50.10(d)(1). There can be no legitimate dispute about the status of Project Veritas and its journalists as members of the news media. Indeed, as demonstrated in their Reply Memorandum of Law in Support of Petition for Return of Property [Dkt. No. 78], government records documenting the commencement of its investigation of Project Veritas acknowledged that the investigation is “sensitive” precisely because the subjects are members of the “News Media.” *Id.* at 1 & Ex. A.

The government has previously assured the Court that it “complied with all applicable regulations and policies regarding potential members of the news media in the course of this investigation, including with respect to the search warrants at issue.” Government’s Memorandum of Law in Opposition to Motions for Appointment of a Special Master [Dkt. No. 29] at 2 n.2. But as Petitioners have explained, the DOJ Regulations prohibit the use of search warrants to seize newsgathering materials. Joint Petition at 18-19 (citing § 50.10(d)(4)). Not even the Attorney General could have approved the PV and Microsoft search warrants consistent with the limitations of the DOJ’s own regulations.

We have now confirmed that the prosecutors and agents conducting the investigation of Project Veritas and its journalists did not obtain the requisite approvals of the Attorney General to apply for the numerous search warrants by which the government seized hundreds of thousands of emails and other Project Veritas newsgathering materials. In September 2022, the Attorney General released the Calendar Year 2021 Annual Report of the Use of Certain Law Enforcement Tools to Obtain Information from, or Records of, Members of the News Media. *See* Exhibit A hereto; *available at* <https://www.justice.gov/criminal-fraud/file/1534096/download> (hereinafter “Annual Report”). The Annual Report represents that in Calendar Year 2021 there were no “[s]ubpoenas and applications for court orders or search warrants authorized by the Attorney General [pursuant to] (28 C.F.R. §§ 50.10(c) and (d)).” *Id.* at 1.

The Annual Report also provides high-level descriptions of the relatively few instances in Calendar Year 2021 when a Deputy Assistant Attorney General authorized the use of any such law enforcement tools to obtain the communications or other records of a member of the news media in connection with matters “wholly outside the scope of the member of the news media’s newsgathering activities.” *Id.* at 1-3. Although the Annual Report describes those investigations in general terms, plainly none of them concerned the news gathering activities surrounding a personal diary provided to the journalists.

We respectfully request that the Court take account of the information contained in this official government record in weighing the arguments made by Petitioners that the government seized their records in violation of the PPA, the First Amendment, the Reporter’s Privilege, and the Fourth Amendment.

Respectfully submitted,

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By: /s/

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cc: All Counsel of Record (via ECF)